IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.1251 OF 2006

Panshilla Electric Company
through its Proprietor Shri
Banwarilal Bhakshiram Diwan .. ..Petitioner

Versus

Mrs.Jessie Louis Castellino .. ..Respondent

Mr.G.S.Godbole for petitioner
Mr.K.Y.Mandlik for respondent

CORAM : P.V.KAKADE, J.
DATE : 12TH APRIL 2006

P.C.:

1. Heard the learned counsel for both the parties. Perused the record.

2. The petitioner has preferred this petition against the judgment and order passed by Addl. District Judge,

Pune dated 27.10.2005 dismissing the appeal and confirming the judgment and order passed by Trial Court dated 21.3.2005 by Small Causes Court Judge, Pune decreeing the plaintiff's suit for vacant possession of the suit premises on the ground that the plaintiff has succeeded in establishing that the premises have not used without reasonable cause for the purpose for which it was let out for the continuous period of six months immediately preceding the date of the suit.

3. The plaintiff filed the suit alleging that the ground floor premises in House No.328 Sachapir Street, Pune Cantonment, Pune with three immovable partitions had been let out to the petitioner-defendant for his own use as well as carrying on business by agreement dated 28.1.1963 and it was renewed from time to time upto the year 1973. According to the respondent-plaintiff, the suit premises is not used by the petitioner-defendant for continuous period of more than six months immediately preceding the suit without reasonable cause and therefore, he was liable to vacate the suit premises by virtue of Section 13(1)(k) of the Bombay Rent Act. The suit came to be filed in July 1998. It was contended by the defendant, inter alia, denying the allegations made by the plaintiff

with submission that the suit premises was under use and occupation of the defendant for the purpose for which it was let out to him.

4. The learned judge after hearing both the parties and on the basis of available evidence came to the conclusion that the plaintiff had succeeded in establishing the ground contemplated under Section 13(1)(k) of the Bombay Rent Act and decreed the suit.

. The appeal was preferred to the District Court, who after hearing both the parties concurred with the findings recorded by the trial judge and dismissed the appeal. Hence the present petition.

5. At the outset, it may be noted that both the courts below appear to have appreciated the evidence on record in proper perspective and therefore, no perversity is found in the reasoning adopted by both the courts below. The trial court as well as the appellate court have relied upon the documentary evidence Exh.88 pertaining to the use of electricity which showed that there was no use of electricity. The Trial Court also appears to have relied upon the evidence of as many as

three witnesses, who supported the fact that the defendant did not use the premises during the relevant period. Be as it may, the fact remains that the courts below have appreciated the evidence properly and therefore, it would brook no interference within the jurisdiction of this Court contemplated by Article 227 of the Constitution of India.

6. In the result, the petition stands dismissed with no order as to costs.

7 At this stage the learned counsel for the petitioner submitted that some time should be granted to the petitioner to vacate the suit premises. In view of the facts and circumstances, the decree for possession shall not be executed till the end of 31st March 2007 from the date of this order on condition that the petitioner and all adult members of his family shall furnish an Undertaking to that effect and further the petitioner shall not create any third party right in the suit premises and shall continue to pay the rent as agreed between the parties for the said period. The undertaking to be furnished within two weeks from the date of this order.